IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPLICATION NO.2811 OF 2003
(Condonation of Delay)
ALONGWITH
CRIMINAL APPLICATION NO.1303 OF 2005
(For leave to apppeal)

The State of Maharashtra .. Applicant.

v/s.

Pralhad Tukaram Mulik & anr. ..Respondents.

Smt.V.R.Bhonsale, Additional Public Prosecutor for the State.

CORAM : R.M. LODHA AND
R.S. MOHITE, JJ.

DATED : 24th February, 2005

P.C.

The present respondents (original accused Nos.1 and 2) were tried for the offences punishable under sections 326, 504, 506 read with section 34 IPC. According to the prosecution case, on 10.1.96 in the morning at about 11.30 a.m. the dispute arose between Ramchandra Mahadev Korade (PW1) and Bharat Tukaram Mulik (accused No.2) on account of common bandh. The water from the agricultural field of Ramchandra Mahadev Korade is alleged to have entered into the land of the accused No.2. The accused No.2 abused him and went away. After about one hour, the accused No.1 as well as accused No.2 came to the agricultural field of Ramchandra Mahadev Korade and questioned him why he had let the water entered in

their land. The accused No.1 is alleged to have given a kick of shoe in the stomach of Ramchandra Mahadev Korade and the accused No.2 gave a kick on his private part. Ramchandra Mahadev Korade fell down and was taken to the hospital. Initially, the offence was registered under section 323, 504, 506 read with section 34 IPC against the accused persons. Upon receipt of the medical papers and x'ray plate from the medical officer, section 326 IPC was added.

2. In support of its case, the prosecution examined Ramchandra Mahadev Korade (PW1), Subhash Korade (PW2), Mohan More (PW3), Balwant Kadam (PW4), Sudam Bhoite (PW5), Dr. Ganesh Khairmode (PW6) and Dr. Anil Shinde (PW7).

3. The fact that no dangerous weapon was used rules out the applicability of section 326. This aspect is not under serious challenge.

4. The question whether the accused persons could be convicted for the offences punishable under section 325 and 323 IPC was considered by the learned trial Judge. There is material omission n the nature of contradiction in asmuch as the aspect of assault is totally absent in the first information report. As regards the threat, PW1 did not state a word in his deposition before the court

that cast serious doubt about the truthfulness of PW1.

5. According to PW1, Mohan More (PW3) and Balwant Kadam (PW4) witnessed the incident. PW3 and PW4 did not support the prosecution case and they were declared hostile. Their evidence does not support the case of the prosecution at all. The very presence of the accused persons at the time of incident appears to be seriously doubtful. PW3 and PW4 have supported the defence case that they were not present at the place of incident.

6. All in all, the acquittal of the accused persons, in the facts and circumstances of the case is a possible view and we are satisfied that this is not a fit case for grant of leave even if we condone the delay.

7. Both the criminal application No.2811 of 2003 and criminal application No.1303 of 2005 stand disposed of accordingly.

(R.M. LODHA, J.)

(R.S. MOHITE, J.)